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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/599,743	10/06/2006	Maarten Willem Driessen	DRIE0102PUSA	3586
7590 Maarten Willem Driessen Orteliusstraat 135-1 Amsterdam, 1057 AW NETHERLANDS			EXAMINER SMITH, CHAIM A	
			ART UNIT 1782	PAPER NUMBER
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/599,743	Applicant(s) DRIESSEN, MAARTEN WILLEM	
	Examiner CHAIM SMITH	Art Unit 1782	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 August 2010.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 10-21 is/are pending in the application.
- 4a) Of the above claim(s) 17-21 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 10-16 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) 10-21 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|----------------------------------------------------------------------------------------|-------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>05/17/2010, 05/17/2010</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Examiners Note

1. Since the claims are replete with functional language and numerous optional or unrequired limitations it unclear exactly what is being claimed, therefore the claims have been examined to the extent to which they could be understood.

Election/Restrictions

2. Newly submitted claims 17 – 21 are directed to inventions that are independent or distinct from the invention originally claimed therefore:

3. Restriction is required under 35 U.S.C. 121 and 372.

This application contains the following inventions or groups of inventions which are not so linked as to form a single general inventive concept under PCT Rule 13.1.

Group I, claim(s) 1 - 16, drawn to a wrapping for herbal and vegetable material made out of textile.

Group II, claim(s) 17, drawn to a bead like form.

Group III, claim(s) 18, drawn to a cable tie.

Group IV, claim(s) 19, drawn to a piece of cloth.

Group V, claim(s) 20, drawn to a frame.

Group VI, claim(s) 21, drawn to a mixture of herbal or vegetable material.

4. The groups of inventions listed above do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding special technical features for the following reasons:

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There is no technical feature linking the six inventions. Claims 10 – 16 are directed to a wrapping for herbal and vegetable material made out of textile.

5. New independent claim 17 is directed to “a bead-like form” comprising a hole and does not recite or require a wrapping for herbal and vegetable material made out of textile.

6. New claim 18 is directed to a cable tie comprising a cable tie that can be reused and does not recite or require a wrapping for herbal and vegetable material made out of textile.

7. New claim 19 is directed to a piece of cloth comprising ever decreasing circles and two square lines having the same centre marked on said cloth and does not recite or require a wrapping for herbal and vegetable material made out of textile.

8. New claim 20 is directed to a frame comprising the frame being bent from a metal wire and having four hooks the same distance to each other and does not recite or require a wrapping for herbal and vegetable material made out of textile.

9. New claim 21 is directed to a mixture of herbal or vegetable material to be used with a wrapping. The herbal material does not recite or require a wrapping for herbal and vegetable material made out of textile

10. As has been shown above new independent claims 17 – 21 are not directed to the originally claimed invention of a chewing bag made from textile, a variation of said bag, and/or do not further limit a chewing bag made from textile therefore there is a lack of unity of invention a priori as there is no subject matter common to all the claims.

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11. Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 17 – 21 are withdrawn from consideration as being directed to a non-elected invention. Applicants attention is invited to MPEP § 821.03, 37 CFR 1.142(b) and MPEP § 1850 for further information.

Claim Rejections - 35 USC § 112

12. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

13. Claims 10 - 16 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

14. Claims 10 – 16 are rejected as failing to define the invention in the manner required by 35 U.S.C. 112, second paragraph.

15. The claim(s) are narrative in form and replete with indefinite, functional, or operational/optional language and fail to conform with current United States practice. The structure which goes to make up the device must be clearly and positively specified. The structure must be organized and correlated in such a manner as to present a complete operative device. The claim(s) must be in one sentence form only. Note the format of the claims in the patent(s) cited.

16. The form and language of the claims makes it unclear exactly what is being claimed. Below are but a few examples.

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17. Regarding claim 10, in paragraph 2, if the cable tie were to be present, “making it possible for the opening of the bag to be folded to the inside”, the recitation “making it possible” does not require the opening of said bag to be folded to the inside and therefore the folding of the bag and all the limitations following are optional and need not be done. As recited in paragraph 3, “when not cut off” and “could be used” are possible options and not positive recitations of any required limitations. In paragraph 4 the recitations “makes it possible” and “we imagine” are conceptual ideas and all that follows is not seen as a positive recitation of any required limitations in the claim.

18. Further regarding claim 10, there is no antecedent basis for the liquid, the dissolved substances, the vegetable pulp, the twisted neck, the opening, the angular points, the sealed opening, the inside, the four angular points, the material, the plastic strand, the hoop, the mouth, the molars, or the stick.

19. Regarding claim 10, it is unclear if the wrapping is to be closed or sealed with a string or a cable tie as both methods of sealing are claimed.

20. Regarding claim 10 is it unclear if the vegetable pulp is the same as herbal and vegetable material.

21. Regarding claim 10, no particular shape for the bag has been recited therefore it is unknown how the bag would be divided into a square if the bag was not already squared shaped. One could cut the bag or fold the bag into a square shape for example.

22. Similarly numerous lack of positive recitations, lack of clarity, and lack of antecedent basis is found in claims 11 - 16, for example:

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23. Regarding claim 11, in paragraph 1 the recitation "can be hold on tight using" makes optional all the limitations that follow. Similarly for "can be made" and "could be used" in paragraphs 2 and 3 respectively.

24. Regarding claim 12, in paragraph 1 the recitation "could be moved and replaced" makes optional all the limitations that follow.

25. Regarding claim 13, the recitation "could be combined" is not a positive recitation and makes all the limitations that follow optional.

26. Regarding the invention claimed, claim 10 recites in paragraph 1 "a bit of string" is "placed around the twisted neck of the opening" of a bag where as in paragraph 2 "the bag is not sealed with a bit of string but with a cable tie". In paragraph 4 the wrapping is claimed to be a round piece of cloth instead of the previously recited bag. The round piece of cloth is regarded as a separate invention as opposed to the bag. There can not be more than one invention in a claim.

27. Claim 13 recites "the wrapping being a round piece of cloth" or alternatively "the wrapping can also be a square piece of cloth".

28. Claim 14 recites "can be folded" is not a positive recitation of folding and makes all the limitations that follow optional.

29. Regarding claim 16, it is unclear how the bag could be "sealed with a bit of string" while at the same time "the bag is not sealed with a bit of string but with a cable tie". Further the recitation "making it possible" is not a positive recitation and makes all the limitations that follow optional. Further regarding claim 16, paragraph 2 recites "instead of the bag the wrapping is a round piece of cloth". The term "instead of" is to be read as

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“or”. Also the round piece of cloth is regarded as a separate invention as opposed to the bag. There can not be more than one invention in a claim.

30. As seen above it is apparent that multiple inventions are being claimed in claims 10 and 16. As set forth in 37 CFR 1.75 “The specification must conclude with a claim particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention or discovery” (emphasis added). Note that “his invention or discovery” is applied in the singular tense. That is to say, a claim must be directed to one and only one invention, not multiple inventions in a single claim as is the case with claims 10 and 16.

Claim Rejections - 35 USC § 102

31. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

32. Claims 10 and 13 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Irwin US 2,555,088.

33. Regarding claim 10, Irwin discloses a wrapping made out of textile strong enough to be chewed on (cotton cloth) (col. 2, paragraph 2) which would be capable of (“for”) wrapping vegetable and herb material (fig. 11 and 12) and capable of letting through a liquid (permeable to water) (col. 3, paragraph 5) but holding back the enclosed material (domestic cloth having 50 threads per inch) (col. 4, paragraph 4) with a bit of string

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(string binder) (col. 3, paragraph 3) and the wrapping is a bag (col. 2, paragraph 1).

That is all that is positively recited in the claim.

34. Regarding claim 13, Irwin discloses the use of a square piece of cloth (fig. 12).

Further, absent persuasive evidence to the contrary it is not seen that patentability would be predicated on the particular width of the cloth. Regarding ever decreasing circles and/or square lines, when the only difference between a prior art product and a claimed product is printed matter that is not functionally related to the product, the content of the printed matter will not distinguish the claimed product from the prior art (MPEP § 2112.02 III.).

Claim Rejections - 35 USC § 103

35. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

36. Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Irwin US 2,555,088.

37. Regarding claim 15, Irwin discloses the wrapping is in combination with a mixture of vegetable material (corn) (col. 4, paragraph 3) and that the component part would dissolve in liquid (carries tasty juices out of the bag) (col. 2, paragraph 2). Further with respect to the selection of the particular components of the mixture, this is seen to have been an obvious matter of choice and/or personal taste based on user preference.

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38. Claims 11, 12 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Irwin US 2,555,088 in view of Van Loon, III US 5,050,999.

39. Claim 11 differs from Irwin in the neck of the wrapping's opening being sealed with a bead-like form, said bead-like form having a hole. Van Loon, III discloses a wrapping in the form of a bag which would be capable of wrapping vegetable and herb material and capable of letting through a liquid (open mesh) (col. 1, paragraph 5) and that in order to make the bag easily reusable the wrapping is sealed with a bead-like form which has a hole and the contents of said hole can hold on tight to its contents thereby keeping the wrap sealed (col. 4, paragraph 4 and 5 fig. 8 and 9). Van Loon, III is using a bead-like form to seal the neck of the wrapping for the art recognized as well as applicant's intended purpose, which is to allow the wrapping to be easily opened and sealed in order to make the wrapping easier to reuse. To therefore modify Irwin and provide a bead-like form to seal the wrapping would have been an obvious matter of choice and/or design. This is all that has been positively recited in the claim.

40. Regarding claim 12, first it is noted that as recited the cable-tie "can be reused", which is to say that, as recited, there is no requirement for the cable-tie to be reusable. Regarding claim 12 Irwin discloses a wrapping made out of textile strong enough to be chewed on (cotton cloth) (col. 2, paragraph 2), which would be capable of ("for") wrapping vegetable and herb material (fig. 11 and 12) and capable of letting through a liquid (permeable to water) (col. 3, paragraph 5) but holding back the enclosed material (domestic cloth having 50 threads per inch) (col. 4, paragraph 4), the wrapping is a bag (col. 2, paragraph 1). Irwin further discloses a draw string placed mostly on the inside of

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the opening of the wrap making it possible for the opening of the bag to be folded to the inside while sealing the opening of the bag (fig. 12).

41. Claim 12 differs from Irwin in the recitation of a “cable–tie”. Van Loon, III discloses a similar structure in that a cord-portion further comprising a lock device which can be unlocked as required or desired by the user to open or close a wrapping, thus allowing said wrapping to be reusable which is, after all, applicant’s stated purpose for providing a cable tie that can be opened. To therefore substitute one known equivalent closure device for another known closure device would have been an obvious matter of choice.

42. Regarding claim 16, Irwin discloses a bag with a bit of string placed around the twisted neck of the opening (fig. 11). Irwin further discloses that a tie is not placed around the twisted neck of the opening but placed mostly on the inside of the opening of the bag (fig. 12).

43. Claim 16 differs from Irwin in the recitation of a “cable–tie”. Van Loon, III discloses a similar structure in that a cord-portion further comprising a lock device which can be unlocked as required or desired by the user to open or close a wrapping, thus allowing said wrapping to be reusable which is, after all, applicant’s stated purpose for providing a cable tie. To therefore substitute one known equivalent closure device for another known closure device would have been an obvious matter of choice. This is all that has been positively recited.

44. Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Irwin US 2,555,088 in view of Linnell et al. US 5,645,353.

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45. Claim 14 differs from Irwin in the provision of a frame made of metal or plastic to assist in maintaining the wrapping open. Linnell discloses is was well established to provide a frame containing four hooks to attach to the four corners of a wrapping (bag) in order to keep the wrapping open in order to make it easier to fill the wrapping and that it is conventional to provide a string, i.e. cord, around the mouth of said wrapping to hold the wrapping open. Linnell is using a frame to maintain the shape and firmness of an opening in a wrapping using hooks for the art recognized as well as applicants intended function which is to make it easier to fill the wrapping. To there fore modify Irwin and provide a frame with hook to make it easier to fill the wrapping would have been an obvious matter of choice. Further, absent evidence to the contrary it is not seen that patentability would be predicated on the particular materials used to construct the frame.

Conclusion

46. Contrary to what is asserted in the specification, and as evidenced by the art taken as a whole, applicant is not the first to create a wrapping or bag in which can be placed herbal or vegetable material which could be chewed on. This is further evidenced by the art of interest which was previously made of record on the PTO form 892 but has not been used to formulate the rejections at this time.

47. Berry, Sr. US 5,364,348 discloses a bag structure comprised of a fine cotton mesh material that would be able to contain herbal materials and allow for chewing said bag while retaining said material and allowing liquids and dissolved substances to be released therefrom. Linden US 4,607,479 discloses a chewing-bag made from a textile

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material containing an herbal material which is filled from an opening on one side.

Lambert discloses a chewing bag which contains non-tobacco herbal material for chewing in the mouth.

48. The following prior art of interest now made of record on the PTO 892 form provides further evidence of the conventionality of providing wrappings that would be capable of containing herbal and vegetable material that could be chewed.

49. Kandlbinder et al. US 6,247,260 and Wood US 4,839,982 both disclose wrappings which would be capable of containing herbal and vegetable material strong enough to be chewed on and capable of letting through the liquid with dissolved substances.

50. As one can see from the rejection above, the USPO, as directed by the U.S. Congress through its laws (and ultimately as set forth in the US Constitution), in determining patentability, must consider what the body of references (termed prior art) teaches one of ordinary skill and then compare this to the claimed invention. Thus under 35 USC 103, the USPTO can combine references. An invention to be patentable must be novel under 35 USC 102. That is, no one reference may teach the claimed may teach the invention as claimed. However, to be patentable, the claims must also be unobvious in view of the prior art taken as a whole. Under 35 USC 103 both conditions must be met, novelty and unobviousness.

51. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

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§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

52. A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

53. Any inquiry concerning this communication or earlier communications from the examiner should be directed to CHAIM SMITH whose telephone number is (571)270-7369. The examiner can normally be reached on Monday-Thursday 7:30-5:00.

54. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rena Dye can be reached on 571-272-3186. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

55. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic

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Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/C. S./
Chaim Smith
Examiner, Art Unit 1782
26 March 2011

/Rena L. Dye/
Supervisory Patent Examiner
Art Unit 1782